

** E-filed January 6, 2012 **

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

18 MIKE GELLER AND MIKE YARBROUGH
19 AS TRUSTEES OF THE INTERNATIONAL
20 BROTHERHOOD OF ELECTRICAL
21 WORKERS LOCAL 302 HEALTH AND
22 WELFARE AND PENSION TRUST FUNDS,

23 Plaintiffs,

24 BANISTER ELECTRICAL, INC., A California
25 Corporation,

26 Defendant.

27 CASE NO.:CV11-0899 HRL

28 REQUEST FOR CONDITIONAL
DISMISSAL PENDING PAYMENT IN
FULL UNDER SETTLEMENT
AGREEMENT AND ORDER
THEREON

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30 All parties having appeared and executed a Stipulation for Entry of Judgment, the parties
31 hereby request that the Court order a conditional dismissal of the entire action. The dismissal is
32 conditional upon payment in full under the Stipulation for Entry of Judgment attached hereto as
33 Exhibit "A". The court shall retain jurisdiction in this matter. In the event Defendant defaults
34 in performance of the terms of the Stipulation for Entry of Judgment, judgment shall be entered
35 upon ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney
36 as to default by the Defendant. Pursuant to the stipulation of the parties, the judgment to be
37 entered shall be for contributions for June 2011 - September 2011, plus the balance owed in
38 liquidated damages for the periods: January - May 2010, July 2010 - March 2011, May 2011 in
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1 the amount of \$60,755.92, attorney's fees of \$1,843.00, Costs of \$350.00, plus current
2 contributions due, less any amounts paid in accordance with the Stipulation for Entry of
3 Judgment.

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5 Dated: 9/19/2011


SUE CAMPBELL
Attorney for Plaintiffs

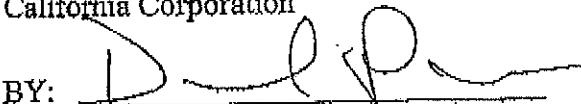
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8 Dated: 9/19/11


BANISTER ELECTRICAL, INC., A
California Corporation

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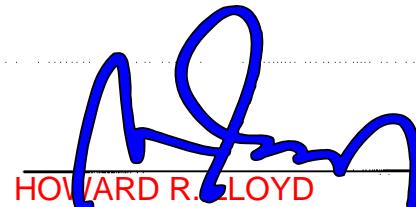
14 **ORDER (MODIFIED BY THE COURT)**

15 In accordance with the settlement and request of the parties, and good cause
16 appearing therefor,

17 IT IS HEREBY ORDERED that a conditional dismissal with prejudice of the
18 entire action be entered. The dismissal is conditional upon payment in full under the Stipulation
19 for Entry of Judgment attached hereto as Exhibit "A" for contributions for June 2011 -
20 September 2011, plus liquidated damages for the periods: January - May 2010, July 2010 -
21 March 2011, May 2011. The Court shall retain jurisdiction over this matter. In the event
22 Defendant defaults in performance of the settlement agreement or payment schedule, and upon
23 ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney as to
24 default by the Defendant, pursuant to the parties' stipulation, the Court authorizes entry of
25 judgment for the balance owed in contributions for June 2011 - September 2011, plus liquidated
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1 damages for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount
2 of \$60,755.92, attorney's fees of \$1,843.00, Costs of \$350.00, plus current contributions due,
3 less any amounts paid in accordance with the Stipulation for Entry of Judgment. The clerk shall
4 close the file. It may be re-opened on application by a party contemporaneously with a request
5 to enter judgment pursuant to the stipulation for entry of judgment.

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8 Dated: January 6, 2012



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HOWARD R. LLOYD
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIKE GELLER AND MIKE YARBROUGH
AS TRUSTEES OF THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL 302 HEALTH AND
WELFARE AND PENSION TRUST FUNDS,

Plaintiffs,

BANISTER ELECTRICAL, INC., A California
Corporation,

Defendant.

CASE NO.:CV11-0899 HRL

STIPULATION FOR ENTRY OF
JUDGMENT, JUDGMENT PAYABLE
IN INSTALLMENTS

(AS MODIFIED BY THE COURT)

IT IS HEREBY STIPULATED and agreed by and between Plaintiffs MIKE GELLER AND MIKE YARBROUGH as trustees and fiduciaries of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST FUNDS. (hereinafter referred to as "TRUST FUNDS") and Defendant BANISTER ELECTRICAL, INC., A California Corporation, ("BANISTER") as follows:

1. BANISTER shall make all payments on contributions due and unpaid to the TRUST FUNDS for the months: June 2011 - September 2011 by October 15, 2011 as follows:

A. The amount due for the month: June 2011 in the amount of \$14,187.04 shall

January 30, 2012 if not already paid
be paid by October 15, 2011.

B. The amount due for the month: July 2011 in the amount of \$12,945.14
shall be paid by ~~October 15, 2011~~ ~~January 30, 2012 if not already paid~~.

C. The amount due for the month: August 2011, due September 15, 2011 shall
be paid no later than ~~October 15, 2011~~ ~~January 30, 2012 if not already paid~~. The amount due for the month:
September 2011, due October 15, 2011 shall be paid no later than ~~October 15, 2011~~ ~~January 30, 2012 if not already paid~~.

BANISTER shall make all payments on the liquidated damages due and unpaid
to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March
2011, May 2011 in the amount of \$60,755.92 on or before October 1, 2012 as set
forth below:

A. The TRUST FUNDS shall waive 50% of liquidated damages due
\$30,377.96.

B. The remainder due in liquidated damages due and unpaid to the TRUST
due under FUNDS for the periods: January - May 2010, July 2010 - March 2011,
have not ~~May 2011~~ in the amount of \$30,377.96 will be paid in twelve monthly
adequate payments. The first eleven payments will be in the amount of \$2,531.49.
complete The first payment will be due on November 1, 2011. The final payment
on or ~~will be in the amount of \$2,531.57, and will be due on October 1, 2012.~~

IT IS FURTHER AGREED that BANISTER shall make payments of all ongoing
amounts to become due to the Trust Funds pursuant to contract between
BANISTER and Trust Funds for covered hours worked by defendant employees
commencing with payment for October 2011 hours due on or before ~~November~~
~~January 30, 2012 if not already paid~~ ~~November 15, 2011~~ and continuing until the full amount of the reduced judgment as set forth
below is paid. Checks will be made payable to the International Brotherhood of
Electrical Workers Local 302 Employee Benefit Trust Fund and sent to Sue

1 Campbell: 1155 N. First St., Suite 218 San Jose, CA 95112.

2 4. IT IS FURTHER AGREED by the parties hereto that upon failure of the
3 Defendant to make any of their monthly contribution payments pursuant to the
4 collective bargaining agreement in the timely manner as required above in Section
5 2, and pursuant to the terms of this stipulation as set forth in Section 1 above, the
6 stipulated judgment attached as Exhibit "A" shall be entered in the amount set
7 forth below:

8 A. The amount due in contributions for the month: June 2011 in the
9 amount of \$14,187.04.

10 B. The amount due in contributions for the month: July 2011 in the
11 amount of \$12,945.14.

12 C. Liquidated damages due and unpaid to the TRUST FUNDS for the
13 periods: January - May 2010, July 2010 - March 2011, May 2011
14 in the amount of \$60,755.92 reduced by offsets for any payments
15 made on the payment schedule.

16 D. Attorney's fees due pursuant to contract in the amount of \$1,843.00.

17 E. Costs of suit incurred in this action in the amount of \$350.00.

18 F. All unpaid contributions for the months: August 2011 - September
19 2011.

20 G. All unpaid contributions from October 2011 through September
21 2012, reduced by any offsets for payments made.

22 Said Judgment shall issue upon ten days written notice to BANISTER, upon the filing of
23 a declaration by Trust Funds' attorney stating that a default has occurred.

24 Upon payment of Contributions for June 2011 - September 2011 and Liquidated damages
25 due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March
26 2011, May 2011 in the amount of \$30,377.96, the TRUST FUNDS shall file a Request for

1 Dismissal with prejudice in the lawsuit filed in the U.S. District Court, Northern District of
2 California, case number: 11-CV-00899 HRL entitled MIKE GELLER AND MIKE
3 YARBROUGH AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF
4 ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST
5 FUNDS vs. BANISTER ELECTRICAL, INC., A California Corporation and shall provide a file
6 endorsed copy of that Request for Dismissal via U.S. Mail to BANISTER ELECTRICAL, INC.,
7 A California Corporation At: 2532 Verne Roberts Circle Antioch, CA 94509.

8 This Stipulation covers the contributions due for June 2011 - September 2011 and
9 liquidated damages due to the Plaintiffs for the time periods: January - May 2010, July 2010 -
10 March 2011, May 2011, only, and does not include any amounts for any other time period that
11 the collective bargaining agreement is in effect between the signatory parties. By entering into
12 this Stipulation, Trust Funds do not waive their right to audit the employer for the above time
13 period, or any other time period, and to collect through a subsequent legal action any additional
14 monies found by an audit to be delinquent because of unreported hours.

15 This agreement may be executed in multiple counterparts, each of which shall
16 constitute an original, and all of which taken together shall constitute one and the same
17 agreement.

18 In witness thereof, Plaintiff and Defendant have executed this stipulation for
19 judgment this 19th day of SEPTEMBER 2011, at San Jose, California.

20 BANISTER ELECTRICAL, INC., A
21 California Corporation

22 DATED: 9/19/11
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24 By: D. R. P.

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Law Offices of Sue
Campbell
1155 N. First St.
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San Jose, CA 95112

STIPULATION FOR ENTRY OF JUDGMENT
No. CV11-0899 HRL

1 I.B.E.W. LOCAL 302 EMPLOYEE
2 BENEFIT TRUST FUNDS
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5 DATED: 9-20-11
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By: Michael W. Yarborough

DATED: _____

By: _____

1 I.B.E.W. LOCAL 302 EMPLOYEE
2 BENEFIT TRUST FUNDS

3 DATED: September 20, 2011

4 By: Michael Gillen

5 DATED: _____

6 By: _____

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Law Office of Sue
Campbell
1155 N. First St.,
Ste. 218
San Jose, CA 95112

STIPULATION FOR ENTRY OF JUDGMENT
No. CV11-0899 HRL

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIKE GELLER AND MIKE YARBROUGH AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST FUNDS, }
Plaintiffs, }
BANISTER ELECTRICAL, INC., A California Corporation, }
Defendant. }

CASE NO.:CV11-0899 HRL
JUDGMENT ON STIPULATION FOR ENTRY OF JUDGMENT

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19 In the above-entitled cause, Plaintiffs MIKE GELLER AND MIKE
20 YARBROUGH as trustees and fiduciaries of the INTERNATIONAL BROTHERHOOD OF
21 ELECTRICAL WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST
22 FUNDS and Defendant BANISTER ELECTRICAL, INC., A California Corporation, having
23 stipulated that judgment be entered in favor of Plaintiff and against the Defendant in the sum of
24 \$90,081.10.

25 IT IS ORDERED THAT Plaintiffs MIKE GELLER AND MIKE YARBROUGH
26 as trustees and fiduciaries of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL
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1 WORKERS LOCAL 302 HEALTH AND WELFARE AND PENSION TRUST FUNDS have
2 and recover judgment from BANISTER ELECTRICAL, INC., A California Corporation in the
3 amount of \$90,081.10 which is composed of the following:

- A. The amount due in contributions for the month: June 2011 in the amount of \$14,187.04.
- B. The amount due in contributions for the month: July 2011 in the amount of \$12,945.14.
- C. Liquidated damages due and unpaid to the TRUST FUNDS for the periods: January - May 2010, July 2010 - March 2011, May 2011 in the amount of \$60,755.92 reduced by offsets for any payments made on the payment schedule.
- D. Attorney's fees due pursuant to contract in the amount of \$1,843.00.
- E. Costs of suit incurred in this action in the amount of \$350.00.
- F. All unpaid contributions for the months: August 2011 - September 2011.
- G. All unpaid contributions from October 2011 through September 2012, reduced by any offsets for payments made.

18 This judgment shall cover only the delinquent amounts for the time periods:
19 January - May 2010, July 2010 - March 2011, May 2011, and June - September 2011. The
20 judgment does not include any unknown amounts due to the Plaintiffs for the time periods:
21 January - May 2010, July 2010 - March 2011, May 2011, and June - September 2011, or for any

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1 other time period that the collective bargaining agreement is in effect between the signatory
2 parties.

3 The judgment specifically does not waive the right of the Trust Funds to audit the
4 employer for the above time period, or any other time period, and to collect any additional
5 monies found to be delinquent as a result of an audit through a subsequent legal action.

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7 DATED: _____

8 **HOWARD R. LLOYD**
9 **United States Magistrate Judge**

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